

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 780 of 2015

Arising out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

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Ram Subas Rai, Son of Late Deo Narayan Rai, Resident of Village - Kanpahri, P.S.
- Chouri, District - Bhojpur

.... Petitioner

Versus

1. The State of Bihar, through the Secretary, Department of Home (Police) Govt. of Bihar, Old Secretariat, Patna
2. The Under Secretary, Department Home (Police) Govt. of Bihar, Old Secretariat, Patna
3. The Superintendent of Police, Bhojpur at Ara
4. Dy. Superintendent of Police, Ara, Bhojpur
5. Officer-in-Charge, Chouri P.S., District- Bhojpur
6. Rabindra Rai
7. Kamta Rai
8. Uday Rai, All sons of Late Bachchu Rai, Resident of Village - Kanpahri, P.S. - Chouri, District - Bhojpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Dronacharya, Advocate

For the Res. No. 4 to 6 : Mr. Ravindra Kumar, Advocate

For the State-Res. : Mr. Anil Kumar Singh, G.P. XXVI

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 25-08-2017

Heard learned counsels for the parties.

2. The petitioner has invoked the writ jurisdiction of this Court for issuance of mandamus against the State-respondents to provide security to the petitioner's family, since private respondent nos. 6 to 8 are interfering in cultivation, by the petitioner, of the land.

3. The record reveals that son of this petitioner, namely, Chandan Kishore Rai has already brought a suit for partition bearing Title Suit No. 358 of 2008 which is pending in the court of learned Sub-Judge-I, Ara against respondent nos. 6 to 8 as well as the



petitioner. The genealogy disclosed in the plaint would reveal that the petitioner is agnate of respondent nos. 6 to 8. In the plaint, it is stated that there is unity of title and possession in respect of the land on which protection for cultivation has been sought for.

4. The prayer is on the ground that the private-respondents are cultivating their portion and are creating hindrance by force in cultivation of the portion in possession of the petitioner.

5. Learned counsel for the petitioner has relied on a judgment of this Court in **Prithwi Chand Gupta vs. The State of Bihar & Ors.** reported in **2008(3) PLJR 442** for his submission that in a civilized society governed by the rule of law every citizen has a right to enjoy his or her property unfettered by interference from any corner, except in accordance with law.

6. The aforesaid case law is not helping the petitioner in the facts and circumstances of the case as respondent of that case had lost against the petitioner of that case in Title Suit No. 1226 of 1916/17 and the respondent has not preferred any appeal. Thereafter in the execution of the decree of the trial court, the petitioner of the case, who was decree-holder purchased the suit property in auction sale.

7. Learned counsel for the State-respondents submits that in this case, the property is joint and everyone including the



respondent nos. 6 to 8 are enjoying possession on each and every fraction of the land along with the petitioner, hence, they cannot be restrained by this Court in exercise of writ jurisdiction.

8. In the present case, the son of this petitioner has admitted unity of title and possession of the private-respondents in respect of the joint family property. The appropriate remedy to the aggrieved party in case of obstruction in cultivation of the land by the party to the suit is already there before the competent court where the suit is pending.

9. At this stage, this Writ Court cannot look into the material to substantiate exclusive possession of the petitioner nor to any report of any police officer regarding possession of the petitioner, to exercise this extra ordinary jurisdiction, especially, considering the pendency of the civil suit. Therefore, in my view, there is no merit in this writ application. Accordingly, it stands dismissed as devoid of any merit.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	30.08.2017
Transmission Date	30.08.2017

